



A.S.(MD).No.142 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Reserved on : 06.11.2023

Delivered on: 22 .11.2023

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

AND

THE HONOURABLE MR.JUSTICE P.B.BALAJI

A.S.(MD).No.142 of 2013

and

C.M.P.(MD)Nos.286 of 2017 & 3876 of 2018

1.K.S.Abdul Rajak

2.K.S.Amanulla

.. Appellants / Defendants 2 & 3

Vs.

1.Shanmugam

.. 1st Respondent / Plaintiff

2.Jamruth Beevi (Died)

.. 2nd Respondent /1st Defendant

3.Ahmed Bagha

4.Maboo Basha

5.Sharmila

(R3 to R5 are brought on record as LR's of deceased R2, vide Court order, dated 04.07.2017,made in CMP(MD)No.10909/2016)

Prayer:- Appeal filed under Section 96 of the Code of Civil Procedure, against the judgment and decree, dated 30.08.2013, made in O.S.No.64 of 2010, on the file of the First Additional District Judge (PCR), Tiruchirappalli.



A.S.(MD).No.142 of 2013

WEB COPY

For Appellants : Mr.V.Vijaya Shankar
for Mr.N.Bala Murali Krishnan

For Respondents : Mrs.Hema Sampath, Senior Counsel
for Mr.A.Thiyagarajan for R1
: R2 - Died
: Ms.J.Anandhavalli for R3 to R5

JUDGMENT

(Judgment of the Court was made by P.B.BALAJI,J.)

The defendants 2 and 3, who are the subsequent purchasers in a suit for specific performance of an agreement of sale, are the appellants before us.

2. For the sake of convenience, the parties are referred to as per their rank before the trial Court.

3. The first respondent herein as plaintiff filed a suit in O.S.No. 64 of 2010, seeking a decree to declare the sale deed No. 1751 of 2010, dated 13.03.2010, executed by the first defendant in favour of the defendants 2 and 3 as null and void and *non-est* in law and for a decree of



A.S.(MD).No.142 of 2013

specific performance of the agreement of sale dated 22.08.2008 and registered extension deed dated 16.07.2009.

4. The case of the plaintiff before the trial Court was that the first defendant had agreed to sell the suit property to the plaintiff for a total sale consideration of Rs.29,25,000/- and an agreement was drawn up on 22.08.2008 and on the same day, the plaintiff paid an advance of Rs.1,25,000/-. A time period of five months was agreed upon for completing the transaction.

5. It is the further case of the plaintiff that the plaintiff came to know about the unregistered mortgage executed by the first defendant in favour of one Deepa, which factum had been suppressed from the plaintiff. The first defendant, on being confronted by the plaintiff, represented that he would take steps to recover the possession of the property from the said Deepa – mortgagee and thereafter execute the sale deed in favour of the plaintiff. The plaintiff, believing the words of the first defendant, waited till December - 2008 and thereafter, chose to issue a lawyer's notice on 19.01.2008, calling upon the 1st defendant to clear the mortgage and also to execute the sale deed in favour of the plaintiff.



A.S.(MD).No.142 of 2013

6.(a). The first defendant replied to the said notice on 03.02.2009 and thereafter, the first defendant sought for time till 15.07.2009, for execution of the sale deed. However, the first defendant did not fulfil her part of the agreement of sale and demanded a further advance of Rs.3,00,000/- to settle the mortgagee's account. The plaintiff and the first defendant therefore, entered into an extension agreement on 16.07.2009, which was also duly registered with the Sub Registrar and under such extension agreement, the plaintiff paid a further advance of Rs.3,00,000/- and a one year time period was fixed for completion of the sale transaction, that is, one year from 16.07.2009. It is the further case of the plaintiff that the first defendant orally assured the plaintiff that she would complete the transaction in six months time.

6.(b). As the first defendant was acting indifferently, the plaintiff was forced to issue another notice on 12.02.2010. To the said notice, the first defendant sent a reply dated 04.03.2010, asking the plaintiff to appear before the Registration Office on 11.03.2010. It is the specific case of the plaintiff that on 11.03.2010, the plaintiff waited at the office of the Sub Registrar, Manapparai, from 10.30 am, to 5.20 pm. However, the first defendant did not appear.



WEB COPY

6.(c). The plaintiff, therefore, made a telephone call to the first defendant on her mobile phone and the first defendant gave some lame excuses. The very next day, the plaintiff send a telegraphic notice to the first defendant. The first defendant sent a telegraphic notice on 24.03.2010 stating that she was in urgent need of money for medical treatment and she will wait before the Sub Registrar Office, on 26.03.2010.

6.(d). According to the plaintiff, even on 26.03.2010, though the plaintiff waited at the Sub Registrar's office, the first defendant did not appear. The plaintiff came to know that on 30.03.2010, the first defendant had fraudulently sold the property to the defendants 2 and 3. According to the plaintiff, the plaintiff had arranged for the entire sale consideration and kept it ready in and in view of the sale of the property by the first defendant to the defendants 2 and 3, the plaintiff suffered loss and mental agony. The plaintiff also contended that the defendants 2 and 3 were trying to alter the physical features of the suit property in order to complicate the matters to the plaintiff. On the strength of such pleadings, the suit for declaration and specific performance was instituted.

7. The first defendant filed a written statement admitting the



A.S.(MD).No.142 of 2013

agreement as well as the extension of time. However, it is the case of the first defendant that the plaintiff was not ready and willing to pay the amount due to the first defendant despite the plaintiff and the first defendant also renewing the sale agreement on payment of further advance of Rs.3,00,000/- and also extending the period by one more year. Though the first defendant was not agreeable to a one year extension, as he did not want to prolong the transaction, he agreed. The exchange of notices is admitted by the first defendant and according to the first defendant, the allegation that the plaintiff was waiting at the Sub Registrar's Office on 11.03.2010 and again on 26.03.2010 was false and the same were denied. The first defendant also admitted that she sold the property to the defendants 2 and 3, as the plaintiff was not ready and willing to fulfil his contractual obligations and also in view of immediate necessity of funds to meet her medical expenses. The first defendant therefore sought for dismissal of the suit.

8. The second defendant filed a separate written statement and the same was adopted by the third defendant. It is their case that they had purchased the suit property from the first defendant for valuable sale consideration and there was no fraud as alleged by the plaintiff. It is further stated that the defendants 2 and 3 had been put in possession and



they had also mutated the revenue records. The plaintiff was therefore not entitled for a relief of specific performance.

9. Before the trial Court, the plaintiff examined himself as P.W.1 and 11 documents were marked as Ex.A1 to Ex.A11. On the side of the defendants, husband of the first defendant was examined as D.W.1 and two other witnesses viz., Vijayakumar and Abdul Rajak were examined as D.W.2 and D.W.3 and 16 documents were marked as Ex.B1 to Ex.B16. Ex.X1 was marked as a Court exhibit, viz., a certified xerox copy of the statement produced by the State Bank of India with regard to D.D. taken and cancelled by the first defendant.

10. The trial Court framed the following issues:

“ 1. Whether the plaintiff is entitled for the relief of declaration to declare the sale deed, dated 13.03.2010, under Doc. No.1751/2010, is null and void and non-est?

2. Whether the plaintiff is entitled to the relief of specific performance of contract, dated 16.07.2009”

3. Whether the plaintiff is entitled to get the return of the sale advance amount of Rs.25,000/- as alternative relief?

4. To what relief?”



WEB COPY

11. On analysing the oral and documentary evidence available on record, the trial Court came to a conclusion that the plaintiff has been ready and willing to perform his part of obligations continuously from the date of his contract and the defendants 2 and 3 cannot plead ignorance as the extension agreement Ex.A5 was a registered sale agreement and therefore, they were not *bonafide* purchasers and the trial Court proceeded to annul the sale deed executed by the first defendant in favour of the defendants 2 and 3 and grant the relief of specific performance.

12. Interestingly, the first defendant did not chose to prefer any appeal and it is only the purchasers, viz., defendants 2 and 3 as appellants, who have challenged the decree and judgment of the trial Court on the following grounds:-

The appellants herein are *bonafide* purchasers for value without the knowledge of the sale agreement between the plaintiff and the first defendant; The trial Court failed to see that the plaintiff was not ready and willing at any point of time and in fact, the first defendant had cancelled the agreement and also chose to return Rs.1,25,000/- received by way of the first advance and prayed for setting aside the decree.



A.S.(MD).No.142 of 2013

WEB COPY

13. We have heard Mr.Vijaya Shankar, for Mr.N.Bala Murali Krishnan, learned counsel for the appellants and Mrs.Hema Sampath, Senior Counsel for Mr. A.Thiyagarajan, learned counsel for the first respondent and Ms.J.Anandhavalli, learned counsel for the respondents 3 to 5.

14. Mr.Vijaya Shankar, learned counsel for the defendants 2 and 3 would state that the trial Court has been carried away by the exchange of notices / communications subsequent to the agreement dated 22.08.2008 and before the registered extension agreement dated 16.07.2009 and that no reliance need to be placed on such exhibits as the parties have consciously renewed the terms in the registered agreement Ex.A5. That apart, the learned counsel for the defendants 2 and 3 would submit that except for bald statement that the plaintiff had been ready and willing, the plaintiff has failed to prove or establish that he was always ready and willing to perform his part of the agreement of sale deed, viz., pay the balance consideration of Rs.25,00,000/- and get the sale deed executed and registered. He would also state that the trial Court has erred in not discussing the hardship caused which was mandated under Section 20 (b) of the Specific Relief Act. He would further state that only after the



A.S.(MD).No.142 of 2013

decree passed by the trial Court, the plaintiff has chosen to deposit the balance consideration of Rs.1,25,000/- and it would not in any way establish the plaintiff's readiness and willingness, prior to the filing of the suit and till the disposal of the suit. He would also further state that except for putting it on paper that the plaintiff is ready and willing, not a scrap of paper was produced to show that the plaintiff was possessed of sufficient funds to make payment of the balance consideration or at least that he was capable of raising the same. He would also reiterate the grounds of appeal to contend that the defendants 2 and 3 are *bonafide* purchasers, who paid not only higher sale consideration of Rs.30,50,000/- to the first defendant, but, they have also taken possession of the property and renovated the same and have been doing business in the said suit property for over 13 years as on date.

15. Mr.Vijaya Shankar, learned counsel for the defendants 2 and 3 would also rely on the judgment of the Hon'ble Supreme Court in ***Vijay Kumar V. Om Parkash*** reported in ***2019-17-SC-429***, for the proposition that the plaintiff, in order to obtain the specific performance has to prove readiness and willingness to perform his part of the contract and failure to



A.S.(MD).No.142 of 2013

establish readiness and willingness will result in the plaintiff's case being thrown out.

16. The learned counsel for the defendants 2 and 3 would also rely on the judgment of the Hon'ble Supreme Court in *Abdullakoya Haji V. Rubis Tharayil* reported in **2019-17-SCC-216**, wherein, the Hon'ble Supreme Court has held that when availability of funds was not satisfactorily explained, then equitable relief for specific performance cannot be granted.

17. He would further place reliance on the decision of the Hon'ble Supreme Court in *Ravi Setia V. Madan Lal* reported in **2020-9-SCC-381**, where the Hon'ble Supreme Court held that there can be no straight jacket formula with regard to readiness and willingness. It will have to be construed in the facts and circumstances of each case, in the light of all attending facts and circumstances. Further the Hon'ble Supreme Court held that grant of relief for specific performance under Section 16(1)(c) of the Specific Relief Act is a discretionary and equitable relief. Under Section 16 (1)(c), the plaintiff has to demonstrate readiness and willingness throughout to perform his obligations under the contract.



18. Finally, he would place on the recent decision of the Hon'ble Supreme Court in ***C.S.Venkatesh V. A.S.C.Murthy (Dead)*** reported in ***2020-3-SCC-280***, wherein the Hon'ble Supreme Court held that

(i) the words “ready and willing” imply that the plaintiff was prepared to carry out those parts of contract to their logical end so far as they depend upon his performance and that continuous “readiness and willingness” is condition precedent to grant relief of performance.

(ii) It is further held that the circumstances are material and if the plaintiff failed to aver or prove “readiness and willingness”, he must fail and bare pleadings in the plaint or in examination-in-chief on his part of the contract by itself would not be sufficient to hold that the plaintiff was ready and willing.

(iii) The Court must take into consideration the conduct of plaintiff prior and subsequent to the filing of the suit along with the other attending circumstances placed before the Court to see whether he was always ready and willing and that the amount which he has to pay the defendants was necessarily available, right from the date of execution of the contract till the date of decree.

19. Per contra, the learned Senior Counsel Mrs.Hema Sampath,

appearing for the counsel for the first respondent / plaintiff would submit



A.S.(MD).No.142 of 2013

that the first defendant has not chosen to prefer an appeal and it is only the defendants 2 and 3 who have challenged the decree and further, even in the written statement of the defendants, except for a casual denial of readiness and willingness, no specific defence has been set up that the plaintiff did not possess sufficient funds and that he was not ready and willing. The learned Senior Counsel would also state that the first defendant's evidence, on the face of it, renders the suit to be decreed and in a suit for specific performance, not only conduct of the plaintiff, but also the conduct of the defendant would be relevant and when the first defendant has chosen to take false pleas and failed to establish the same, it would automatically render the plaintiff entitled to a decree as prayed for. She would also attack the *bonafide* of the appellants stating that Ex.A5 - extension agreement was duly registered with the Sub Registrar Office and that the same would reflect in the encumbrance certificate. Therefore, according to the learned Senior Counsel, the defendants 2 and 3 have taken a risk in purchasing the property, despite the knowledge of the agreement of the sale between the plaintiff and the first defendant, and therefore, they cannot seek any shelter under Section 19 of the Specific Relief Act.



A.S.(MD).No.142 of 2013

20. The learned Senior Counsel would reply upon the decision of the Hon'ble Supreme Court in ***Smt.Indira Kaur V. Sheo Lal Kapoor*** reported in ***1988-2-SCC-488***, where, the Hon'ble Supreme Court held that when the defendant was never willing to perform his part of the contract, that he had not gone to the Sub-Registry at all, and that he merely wanted to defeat the claim of the plaintiff by refusing to remain present at the Sub Registry on the day on which deadline for conveying the property was to expire, the plaintiff are to do anything and the suit should have drawn adverse interference against the defendant was decreed the suit for specific performance.

21. The learned Senior Counsel would also place reliance on the decision of the Hon'ble Supreme Court in ***Aniglase Yohannan V. Ramlatha*** reported in ***2005-7-SCC-534***, where the Hon'ble Supreme Court held that the person seeking the benefit of specific performance should manifest his conduct to be blemishless before entitling him to the relief and if the pleadings manifest such a conduct of the plaintiff, then the relief should not be denied.



A.S.(MD).No.142 of 2013

22. The learned Senior Counsel would also place reliance on the decision of the Hon'ble Supreme Court in ***Silvey V. Arun Varghese*** reported in ***2008-11-SCC-45***, where the Hon'ble Supreme Court held that when the plaintiff was always ready and willing, but, the defendants were not ready to perform their obligations in terms of agreement and the conduct of the defendants taking a false plea would have to be taken into account, while decreeing or denying for specific performance.

23. Having heard the learned counsel for the defendants 2 and 3 and the learned Senior Counsel for the plaintiff, we determine the following points to be decided in the present First Appeal:-

“(I) Whether the plaintiff was ready and willing to perform his part of the agreement of sale, dated 22.08.2010 in Ex.A1 and the extension agreement dated 16.07.2009 – Ex.A5.

(II) Whether the defendants 2 and 3 / appellants are bonafide purchasers for value and whether in the event of the plaintiff succeeding to the relief of specific performance, the defendants 2 and 3 can put forth the defence of being bonafide purchasers and protect their purchase?



Points I and II:

WEB COPY

24. In the event of the plaintiff proving his “readiness and willingness”, alone, we may have to go into the second question to be determined as set out herein above. However, in the event of ultimately finding that the plaintiff was not ready and willing to perform his part of the sale agreement and the extension agreement, then the necessity to go into the issue of *bonafides* or otherwise of the defendants 2 and 3 may not even arise. Thus, both points I & II are dealt together.

25.(a). The parties have admitted the agreement as well the extension agreement. The agreement sale Ex.A1 is unregistered. However, extension of agreement - Ex.A5 is a registered document. There is no dispute with regard to the sale consideration or the amount advanced by the plaintiff in Ex.A1 or further advance of Rs.3,00,000/- in Ex.A5. The time period within which the sale agreement was sought to be completed under Ex.A1 was extended by a year from 16.07.2009 in Ex.A5 and this is also an admitted position.

25.(b). However, it is the case of the plaintiff that he was always ready and willing and the first defendant, despite calling upon the plaintiff to appear before the Sub Registrar, it was the first defendant, who did not turn up and instead only gave lame excuse.

25.(c). Therefore, according to the plaintiff, he had exhibited his



A.S.(MD).No.142 of 2013

readiness and willingness having been present in the Sub Registrar Office viz., on 11.03.2010 and 26.03.2010 and Ex.A10 is also a registered instrument filed by the plaintiff to impress upon the Court that he was in fact present at the Sub Registrar's Office, as contended by him, waiting for the first defendant to come and register the document.

25.(d). From Ex.A10, it is seen that the plaintiff has not only attested Ex.A10, which is a settlement deed, but, also he has signed as an identifying witness of the Sub Registrar's Office. Therefore, the case of the plaintiff is that he was present on 26.03.2010 cannot be disbelieved. At the same time, though the first defendant has contended that she was present at the Sub Registrar's Office, both on 12.03.2010 and again on 26.03.2010, we do not find any evidence in support of such claim. We therefore accept the plaintiff's version that he was present before the Sub Registrar's Office, at least on 26.03.2010.

26. (a). Insofar as the plaintiff's claim that on 11.03.2010 also he was present at the Sub Registrar's Office through out and that the first defendant did not turn up. The plaintiff has sent a telegraphic notice in Ex.A8 stating that he was present at the Sub Registrar Office on 11.03.2010. Receipt of the such telegraphic has not been denied by D.W.1 - husband of the first defendant. Though the first defendant has filed Ex.B2 another telegram sent, stating that she was waiting at Manappatai



A.S.(MD).No.142 of 2013

Sub Registrar's Office, the plaintiff did not turn up, the said Ex.B2 telegram has been sent by the first defendant on 12.03.2010 at 14.05 hours.

26. (b). This exhibit is seriously challenged by the Senior Counsel, Mrs. Hema Sampath contending that when the first defendant was required to be present only on 11.03.2010, after the plaintiff sent Ex.A8- telegraphic notice, the first defendant in order to create false evidence has chosen to issue the telegram, as if he has been waiting at the Sub Registrar's Office. In any event on 12.03.2010, according to the Senior Counsel, there is no purpose served by the first defendant being available at the Sub Registrar's Office. It is seen from Ex.A9 that the first defendant has sent another telegram on 24.03.2010 stating that she was in need of money for her medical treatment and therefore, the sale deed could be registered on 26.03.2010, which is this date on which the plaintiff has been present at the Sub Registrar's Office, where he has witnessed EX.A10 – settlement deed.

27.(a). As seen from the ratio laid down by the Hon'ble Supreme court in the above referred cases, the plaintiff has to establish readiness and willingness to perform his part of the agreement of the sale, in order to entitle himself to the equitable and discretionary relief of specific performance.

27.(b). It is one thing to say that the plaintiff has the intention to



A.S.(MD).No.142 of 2013

go ahead and complete the sale consideration and a totally different thing to plead and prove that in order to carry out his intention, the plaintiff was ready to pay the balance sale consideration. In the telegram issued by the first defendant in Ex.A9, the first defendant has clearly stated that the plaintiff has to pay the balance consideration and get the sale deed registered. We have examined the evidence of P.W.1 and we do not find any whisper about the plaintiff being ready with the balance consideration of Rs.25,00,000/-. The balance sale consideration forms a substantial part of the sale consideration and the advance paid is only about Rs.4,25,000/-, which is about roughly 1/7th of the total sale consideration alone.

27.(c). Insofar as the balance sale consideration of Rs. 25,00,000/-, the plaintiff has not been able to demonstrate before the Court by oral evidence or documentary evidence that he was possessed any sufficient funds to pay the balance sale consideration and get the sale deed registered.

27. (d). In fact, the first defendant in Ex.A9 has clearly indicated that she is in urgent need of money and if the plaintiff paid the money, viz., the balance sale consideration, she would register the sale deed in favour of the plaintiff. Even in the reply notice Ex.A 7 , dated 04.03.2010, the first defendant has stated that on or before 11.03.2010, the plaintiff has to pay the balance sale consideration and get the sale deed executed from the



A.S.(MD).No.142 of 2013

first defendant and failing the same, the agreement would stand cancelled.

In Ex.A9 – telegram, the first defendant had reiterated her notice dated 04.03.2010 in Ex.A7 and she has stated that she is waiting for the plaintiff to pay the balance amount to execute the sale deed. This telegram has been sent on 12.03.2010.

27.(e). On above evidence on record, we are also unable to countenance the submission of the Senior Counsel that the issuance of the said telegram on 12.03.2010, is of no avail because on perusal of Ex.A7, we do not find that the first defendant had fixed the date of registration on 11.03.2010. What all is stated in the reply notice is that the plaintiff would pay the balance sale consideration on or before 11.03.2010 and get the sale deed registered. Under such circumstances, we do not find it improper for the first defendant to have gone to the Sub Registrar's Office on 11.03.2010 and issued a telegram stating that he was waiting. Though the language employed in the said telegraphic notice appears to be improper, the intention which can be gathered from the said telegraphic notice in Ex.A9, dated 24.03.2010 is that she was badly in need of money to meet her medical expenses and therefore, she would be waiting at the Sub Registrar's office on 26.03.2010 at 10.00 am., and the plaintiff was required to pay the balance sale consideration and get the sale deed registered.



A.S.(MD).No.142 of 2013

28.(a). We can see that the first defendant has called upon the plaintiff to pay the balance sale consideration and get the sale deed executed. It only implies that the first defendant had demanded the amount due and payable by the plaintiff as a pre-condition for conclusion of the sale transaction, which is a quite natural conduct of any prudent vendor. However, except for putting it on paper that the plaintiff is always ready and willing to perform his part of the agreement of sale, the plaintiff has miserably failed to show that he had sufficient funds viz., a sum of Rs. 25,00,000/- at all relevant points of time and therefore he deserved the equitable relief of specific performance.

28.(b). We are conscious of the fact that Section 16 is a bar appear for special relief. Even if it is accepted that the conduct of the defendant is also material, first and foremost, it is for the plaintiff to establish that he was ready and willing to perform his obligations. Even if the defendant remains *exparte*, a decree would not follow automatically and the plaintiff has to establish, by the pleadings as well as proof that he has always ready and willing to perform his part of the contract and thereby, he became entitled to the discretionary as well as equitable relief of specific performance.

28. (c). In the instant case, the plaintiff has merely pleaded about his readiness and willingness and at no point of time, despite specific



A.S.(MD).No.142 of 2013

demand made by the first defendant, he has come with the balance money and offered / paid the same to the first defendant and get the sale deed registered. There is absolutely no evidence forthcoming on the side of the plaintiff. Mere presence of the plaintiff before the Sub Registrar, as we have found on 11.03.2010 and again on 26.03.2010, would be of no avail because it is not proved that the plaintiff was ready with the money and the pleadings only demonstrate that the plaintiff was only present before the Sub Registrar and nowhere, the plaintiff says that the balance sale consideration of Rs.25,00,000/- was ready and with him at those times and therefore, the absence of the first defendant on these two occasions cannot be put against the defendants.

29. Insofar as the trial Court placing reliance on the communications exchanged between the parties, after the first agreement dated 22.08.2008 and before the extension agreement dated 16.07.2009, we are unable to countenance the approach of the trial Court for the simple reason that by entering into an agreement on 16.07.2009 – Ex.A5, the previous acts and omissions of the parties have been consciously waived and factored at the time of Ex.A5 being entered into, extending the time for executing and registering the sale deed and also acknowledging a further advance payment of Rs.3,00,000/- by the plaintiff. As we have already set out Section 16 is a personal bar to relief and therefore the burden is only



on the plaintiff to establish that the plaintiff does not fall under any of the ingredients thereunder. The plaintiff seeking the relief of specific performance, cannot try to shift the burden on the first defendant and canvass that the first defendant has pleaded a false case and therefore such conduct should be factored and the plaintiff's case thereby automatically accepted and the suit be decreed as prayed for.

30. We have also found that the first defendant has not only in the written statement, but also in the earlier exchange of notices clearly stated that the plaintiff has not been ready and willing and such pleadings in the written statement coupled with the stand taken in the exchange of notices is more than sufficient to call upon the plaintiff to establish his readiness and willingness. Moreso, in the telegram – Ex.A9, dated 24.03.2010, the first defendant has clearly stated that she is in urgent need of money to meet the medical expenses and also called upon the plaintiff to pay balance sale consideration. We are unable to find anything from the evidence available on record that the plaintiff was ready with the balance sale consideration of Rs.25,00,000/-. Again as already stated, “readiness” and “willingness” are two different concepts and it is not enough for a plaintiff to be merely willing to complete the transaction, but, he must also exhibit readiness coupled with the said willingness to satisfy the Court that he had wherewithal to pay the balance sale consideration and that he was



A.S.(MD).No.142 of 2013

willing to go ahead and pay the same and complete the sale transaction.

Unless both these ingredients are established, the plaintiff does not become entitled to a decree for specific performance.

31. The trial Court unfortunately has lost sight of these key ingredients that are required to be looked into in a suit of this nature. The trial Court unnecessarily referred to the conduct of the parties, especially Ex.A1 and Ex.A5, which did not warrant any discussion whatsoever, since the parties by their own conduct, expressly varied the terms of agreement by extending the time for concluding the transaction by one year. The trial Court clearly fell in error in bringing hanging on the defence set up by the first defendant and the falsity in the same to entitle the plaintiff to have a decree. The course adopted by the trial Court is against the very rudiments and requirement of law, in a suit for specific performance. Point No.I is therefore answered in favour of the appellants.

32. Having found that the plaintiff has not been ready and willing to pay the balance sale consideration of Rs.25,00,000/-, the question of annulling the sale deed executed by the first defendant in favour of the defendants 2 and 3 does not require to be adjudicated upon.



A.S.(MD).No.142 of 2013

33. In fine, we allow the Appeal Suit and the judgment and decree dated 30.08.2013, made in O.S.No.64 of 2010, on the file of the First Additional District Judge (PCR), Tiruchirappalli. is hereby set aside. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

(T.K.R.J.) & (P.B.B.J)
22.11.2023

Internet : Yes
Index: Yes/No
Neutral Citation: Yes/No
Ls
To

- 1.The First Additional District Judge (PCR),
Tiruchirappalli.
- 2.The Section Officer,
VR Section, Madurai Bench of Madras High Court,
Madurai.



WEB COPY



A.S.(MD).No.142 of 2013

RMT.TEEKAA RAMAN, J.,
and
P.B.BALAJI,J

Ls

judgment in
A.S.(MD).No.142 of 2013
and
C.M.P.(MD)Nos.286 of 2017 & 3876 of 2018

22.11.2023